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October 29, 2002  
DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

**Hearing Officer's Decision**

Name of Case:            Personnel Security Hearing

Date of Filing:           April 25, 2002

Case Number:            VSO-0539

This Decision concerns the eligibility of XXXXXXXXXXXX (the individual) to be granted a level "Q" access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." The local Department of Energy Operations Office (the DOE Office) determined that reliable information created a reasonable doubt regarding the individual's eligibility for access authorization under the provisions of Part 710. This Decision considers whether, on the basis of the evidence and testimony in this proceeding, the individual's access authorization should be granted. For the reasons stated below, it is my opinion that the individual's access authorization should be granted.

**I. BACKGROUND**

In the course of reviewing records the DOE Office obtained for determining the individual's eligibility for access authorization, it discovered that the individual had been arrested a number of times, starting when he was a minor and continuing, with some hiatuses, through the present. To review the details of these arrests and to inquire into his history of alcohol consumption, the DOE Office conducted a Personnel Security Interview (PSI) of the individual on July 13 and 16, 2001. DOE Exhs. 6-1 and 6-2 (Transcripts of PSI). The PSI failed to resolve the security concerns raised by the individual's history of alcohol consumption and alcohol-related arrests. Accordingly, the DOE Office referred the individual to a board-certified psychiatrist (the DOE Psychiatrist) for further evaluation of his mental condition. After reviewing the information that the DOE Office provided to him and conducting an evaluation of the individual, the DOE Psychiatrist determined that the individual's history was "consistent with a diagnosis of alcohol abuse," without sufficient evidence of rehabilitation or reformation.

Because the individual was unable to resolve the security concerns by means of the PSI or the psychiatric evaluation, an administrative review proceeding was initiated. *See* 10 C.F.R. § 710.9. The DOE Office issued a letter notifying the individual that it possessed information which raised a substantial doubt concerning his eligibility for access authorization (the Notification Letter). The

Notification Letter specifies two areas of derogatory information described in 10 C.F.R. § 710.8. First, the Notification Letter alleges that the individual “has been, or is a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist as alcohol dependent or as suffering from alcohol abuse.” *See* 10 C.F.R. § 710.8(j) (Criterion J). Second, the Notification Letter alleges that the individual “has engaged in unusual conduct or is subject to circumstances which tend to show that he is not honest, reliable, or trustworthy; or which furnishes reason to believe that he may be subject to pressure, coercion, exploitation or duress which may cause him to act contrary to the best interests of the national security.” *See* 10 C.F.R. § 710.8(l) (Criterion L). The individual filed a request for a hearing, which was forwarded to the Office of Hearings and Appeals (OHA), and I was appointed as Hearing Officer.

At the hearing, the DOE Office presented two witnesses, the DOE Psychiatrist and the Personnel Security Specialist who processed the individual’s request for access authorization for the DOE. The individual testified on his own behalf and presented six witnesses: two mental health professionals, his supervisor, a co-worker, a personnel security clearance specialist, and his wife. *See* Transcript of Hearing, Case No. VSO-0539 (Tr.).

## **II. STANDARD OF REVIEW**

The hearing officer's role in this proceeding is to evaluate the evidence presented by the agency and the individual, and to render a decision based on that evidence. *See* 10 C.F.R. § 710.27(a). Part 710 generally provides that “[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable and unfavorable, as to whether the granting or continuation of access authorization will not endanger the common defense and security and is clearly consistent with the national interest. Any doubt as to the individual’s access authorization eligibility shall be resolved in favor of the national security.” 10 C.F.R. § 710.7(a). I have considered the following factors in rendering this decision: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, including knowledgeable participation; the frequency and recency of the conduct; the individual's age and maturity at the time of the conduct; the voluntariness of the individual's participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors. *See* 10 C.F.R. §§ 710.7(c), 710.27(a). The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

When reliable information reasonably tends to establish the validity and significance of substantially derogatory information or facts about an individual, a question is created as to the individual's eligibility for an access authorization. 10 C.F.R. § 710.9(a). The individual must then resolve that question by convincing the DOE that granting his access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). In the present case, the individual has convinced me that granting his security clearance will not endanger the common defense and will clearly be in the national interest.

### III. FINDINGS OF LAW AND FACT

#### A. Criterion J: Diagnosis of Alcohol Abuse

The derogatory information on which the DOE Office has relied in formulating its Criterion J concern is the DOE Psychiatrist's diagnosis of the individual. The DOE Psychiatrist provided that diagnosis to the DOE Office in a report dated October 2, 2001. In that report and in his testimony at the hearing, the DOE Psychiatrist explained that he had based his diagnosis on a review of documents from the individual's personnel security file and on his personal evaluation of the individual on October 2, 2001. *See* DOE Exh. 3-4. While noting that "this is very much a borderline case," the DOE Psychiatrist concluded that the individual's "history is consistent with a diagnosis of alcohol abuse." *Id.* at 1, 4. At the hearing, the DOE Psychiatrist explained his diagnosis in more detail: "My opinion was that he had *had* alcohol abuse. I had no data to indicate that for the several months prior to [my evaluation] that he . . . did currently have alcohol abuse when he was seeing me." Tr. at 170 (emphasis added).

The individual testified that he started drinking alcohol in high school, and was arrested twice for being a minor in possession of alcohol. Tr. at 85-86. After he turned 18 but while he was still in high school, he was arrested for Driving Under the Influence of Alcohol, pleaded guilty to the offense, and paid a fine. Tr. at 86-88. Throughout college, he drank socially, and occasionally heavily, in the range of 12 beers in an evening. Tr. at 91. In the first year or two after college, the individual was arrested twice more for public intoxication and disorderly conduct that occurred on evenings of drinking with friends. Tr. at 91-92; DOE Exh. 4-2 (Report of Office of Personnel Management Investigations Service).

The individual then began a career in law enforcement. During this period, the individual drank alcohol on "special occasions" at events with fellow officers. Tr. at 93. Once a year or so, the individual would drink considerably, in the range of 12 beers, at such events. Tr. at 94. In May of 2000, several years after his last arrest, the individual was again arrested, and was charged with drunkenness. DOE Exh. 5-1 (Police Report). The DOE Psychiatrist reports that the individual told him he had gotten "really drunk— I got into a fight at a bar and was arrested." DOE Exh. 3-4 at 3. The report also states that the individual blacked out and does not remember details about the evening, other than that he was drinking hard liquor. *Id.* At the hearing, the individual testified that he woke up in jail in a holding cell. Tr. at 96. He overheard a conversation between other individuals in the holding cell concerning the availability of illegal drugs. He was ashamed of himself, as a law enforcement officer, for winding up in the same cell with drug offenders, and promised himself he would never return. Tr. at 96. He stopped drinking hard liquor, having associated hard liquor with each of his arrests, and cut back on his beer consumption. He became more health conscious and joined a health club. Tr. at 99.

He then stopped drinking alcohol in any form, and maintains that he drank his last beer on New Year's Eve 2000. Tr. at 101. Shortly after that, he started dating a woman, whom he ultimately married in December 2001. She was and is active in her church, which frowns upon drinking. As he spent more time with her, he too became active in her church. Both the individual and his wife

testified that alcohol has no part of their life together, and it appears that, as newlyweds, they spend much of their time together. Their friends, mostly church associates, do not consume alcohol. On occasions when the individual has spent time with old friends who do drink alcohol, he has not. Nevertheless, the DOE Psychiatrist felt that, at the time of his evaluation, the nine months of abstinence since New Year's Eve 2000 was "far too short a time" to be sure that the individual had achieved reformation from alcohol abuse. DOE Exh. 3-4 at 4. He was particularly concerned that the May 2000 incident occurred after the individual had consciously cut back on his drinking for an extended period of more than five years, and that the amount he consumed on that occasion was sufficient to cause him to black out. *Id.* On the other hand, the DOE Psychiatrist recognized that the individual had made sweeping lifestyle changes for the better. *Id.* Nevertheless, the individual's behavior in May 2000, in conjunction with his history of alcohol consumption, raises important security concerns. Consequently, I find that the local DOE Office properly invoked Criterion J in suspending the individual's access authorization.

In an addendum to his report, the DOE Psychiatrist stated his opinion that two years of abstinence would constitute reformation in the individual's case, provided the individual maintained the lifestyle changes he had described to him. DOE Exh. 3-2. At the hearing, the DOE Psychiatrist explained his opinion. He stated that there is no appropriate published study that establishes how likely it is that an individual will maintain abstinence with the passage of time. Tr. at 173. He relied on one study of abstinence, while asserting that it did not cover the same factual situation as that of the individual, which found that four years after treatment, more than half the population of the study were no longer abstinent, even disregarding short-term relapses to drinking. Tr. at 173-75. He has formed the opinion that if a person remained abstinent for an additional, fifth year, the odds would be better than 50% that he would maintain his abstinence. Tr. at 176. On the other hand, the DOE Psychiatrist felt that the individual's change in lifestyle as of the time of the evaluation— abstinence for nine months, his girlfriend, whom he intended to marry shortly, his change of friends, going to the gym— was a "very strong mitigating factor." Tr. at 177. On the basis of that evidence of mitigation of the individual's alcohol problem, and pressed by the DOE Office to state a minimum period of abstinence required for reformation in the individual's case, the DOE Psychiatrist set this period at two years. He further stated, "I did pull a number out of the air and I have regretted it ever since." Tr. at 180. Under questioning by the DOE counsel, he explained:

A: Let me tell you how I pulled that number out, if I may.

Q: Please do.

A: [With f]ive years [of abstinence] I could be much more certain. Now, with the mitigating factor, which is a strong one . . . how long will it take . . . And I finally said, well, all right let me trim this down to two years and that is the basis of the science that we deal with. It is an arbitrary number and I know the number is going to come up again today but, you know. Did that answer your question?

Q: Yes, sir, it does. I guess we're saying it is not an exact science, by any means whatsoever?

A: It is not even a science. This is the [study] I have been able to find.

Tr. at 181-82. He summed up his testimony later in the hearing when he stated that although his selection of two years for reformation could have just as well been eighteen months or three years, the concept was that he “was backing off from five years because [the individual] had a very strong, helpful change of lifestyle.” Tr. at 206, 208-09.

During the hearing, the DOE Psychiatrist was also questioned about his diagnosis in light of the testimony received regarding the individual’s behavior in the ten months that had transpired since his evaluation of the individual. He clarified that the diagnosis he gave in his evaluation report “applied to many years earlier.” Tr. at 186. *See* DOE Exh. 3-4 (DOE Psychiatrist’s report states individual’s “history is consistent with a diagnosis of alcohol abuse”). By contrast, “[a]s of today the data that I have would lead me to the conclusion that currently he does not have alcohol abuse or dependence.” Tr. at 183. He went on to analyze the risk factors in the individual’s case that have a bearing on whether he has reformed from his past history of alcohol abuse:

Let me mention some risk factors that there have been some preliminary studies on that seem reasonable, that is the best that I can say at this point. Certainly the one, the major one, the change in lifestyle is a negative risk factor. That is, it lowers the risk. The change in the environment that he is in, he is not in an alcoholic environment now. All of these things lower the risk. There are two things that I observed today, which I think would bear on that and one is a positive and one is a negative. The lowering one is what [the individual’s wife] described as to how their marriage proceeded, and so on, it was not anything impulsive, it was nothing rushed into . . . In fact, it was kind of backed into, as I interpreted what you were saying, ma’am. And that is good. On the other side, I hesitate to say bad because that has connotations that maybe overestimate the amount, but I have to realistic about this. In the course of his testimony [the individual] broke down into tears and this evokes a lot of sympathy from all of us, including me. We feel for him. It was a difficult thing, but of course as an evaluator, as a psychiatrist, I have to put my reaction aside and look at it clinically. And clinically this is evidence of some emotional discontrol and emotional discontrol weighs, unfortunately, [against the individual]. . . . People who are prone to lose their emotions are somewhat more prone to have risks as far as alcohol is concerned. So we are faced with pluses and minuses. . . . But I would once again say, I don’t know, about two years, that is all I can say.

Tr. at 184-85.

Two other mental health experts testified at the hearing. One was a licensed alcohol and drug abuse counselor, to whom the individual was referred for an assessment. After subjecting the individual to standardized testing and a personal interview, the counselor formed the opinion that the individual had experienced episodes of alcohol abuse in the past, but functioned more successfully, in terms of family, employment, education, morals and values, during those episodes than most people with alcohol and drug problems. Tr. at 153, 164-65. Furthermore, he believed that the individual did not

currently show signs of alcohol abuse, and saw no risk of relapse or going back to drinking. Tr. at 152, 164. He also stated that, in contrast to most drug addicts and alcoholics, the individual was very honest and straightforward in providing responses during the evaluation. Tr. at 159-160.

The final mental health expert to testify was a licensed clinical psychologist, who met with the individual and his wife for evaluation and treatment ten times over a four-month period in 2002. He described the individual as being cooperative and forthcoming in their sessions. Tr. at 219. He stated that the individual had already “turned around and was making better decisions” by the time they began to meet. Tr. at 219. His assessment was that the individual reached an epiphany of sorts when he found himself in jail in May 2000, which allowed him to break out of his denial that he had an alcohol problem. At that time, he made a “pretty good” decision to stop drinking hard liquor and to restrict his beer intake. He later made a better decision—abstinence—and in their sessions the psychologist was trying to support that decision. Tr. at 219-220. He agreed with the other mental health professionals that the individual had a history of alcohol abuse but no current diagnosis of alcohol abuse. Tr. at 223. His prognosis of the individual was highly favorable, based on his May 2002 “epiphany,” his relatively long period of abstinence, the positive steps he has taken to change his habits, as described above, and the wealth of support that surrounds him through his wife, his co-workers, and his church. Tr. at 225-28. He disagreed with the DOE Psychiatrist’s negative characterization of the individual’s breaking down during the testimony. He explained further:

I really don’t see it as a negative. First of all, I really don’t see anything in [the individual’s] past, and certainly his recent past over the last nineteen months, that indicates that he is emotionally labile. The fact that a person breaks down in a condition of stress; I’m not surprised by, and as a matter of fact, sometimes I’m really kind of impressed that somebody has that kind of affect available to him and can show it. . . . I don’t see him as emotionally labile . . . and I don’t think that kind of display is prognostic of a greater propensity to start drinking again.

Tr. at 229. The psychologist concluded that he believes the individual “has gotten on top of his problem and the chances of relapse are very, very small.” Tr. at 232. He continued: “You have to look at the whole picture and you have to look at, first of all, what brought about the beginning of the reform. And I think this truly was an understanding on [the individual’s] part that he was really screwing up his life badly and that alcohol was not good for him. Then you look at all the supports and you look at his behavior since then.” Tr. at 234.

I have considered all the testimony described above as well as the testimony received at the hearing that has not been summarized here and documentary evidence in the record. It is clear that the individual’s alcohol problem is a borderline matter, with experts expressing opinions on both sides of the issue. It is also clear that the individual has taken great personal strides with regard to his behavior towards alcohol since he was jailed in May 2000. It is my opinion, notwithstanding that of the DOE Psychiatrist, that the individual’s momentary breakdown during his testimony should not be viewed as evidence of increased risk that the individual will relapse into alcohol abuse. In any event, it is outweighed by the greater body of evidence that the individual achieved a clear

realization of his alcohol problem in May 2000, and since that time has turned his life around in that regard to such a degree that I agree with the psychologist that the risk of relapse is very small.

Finally, it is clear as well that, while conditioning a finding of reformation from alcohol abuse on an extended period of abstinence is unassailable, the two-year period of abstinence the DOE Psychiatrist has chosen is, by his own statement, arbitrary. All the mental health professionals who testified agree that the individual had overcome his denial of his alcohol problem in May 2000, has abstained from all alcohol consumption since January 2001, and substantially changed his lifestyle in such a manner that alcohol is no longer a part of it. Their respective opinions diverge with regard to whether the individual's 19 months of abstinence, as of the date of the hearing, is sufficient evidence of reformation. My common-sense judgment is that the individual has established sufficient evidence of reformation. On one hand, I am faced with the DOE Psychiatrist's assertion that two years is required in this case, though the basis for establishing that period of abstinence is shaky at best. On the other hand, I am influenced by the psychologist's "big picture" analysis: when I consider the individual's reasons for overcoming his denial— his "epiphany"— his long-term commitment to a new lifestyle, his marriage to a non-drinker, his involvement with a church that frowns on alcohol, and the support system offered by his wife and church, I find that the risk that he will resort to alcohol abuse is no greater, and possibly less, than the risk that any other holder of access authorization would engage in alcohol abuse. Consequently, it is my opinion that the individual has resolved the DOE Office's security concern under Criterion J.

## **B. Criterion L: Alcohol-related Arrests**

The derogatory information on which the DOE Office has relied in formulating its Criterion L concern is the history of arrests of the individual. The DOE Office's concern is that an individual who violates laws of public safety and social order may be likely to violate laws and policies that protect classified information and material. Tr. at 46-47 (testimony of personnel security specialist). The DOE Office has not raised any other factual basis for its concern that the individual is unreliable, dishonest or untrustworthy. Tr. at 46.

As discussed above, the individual was arrested six times. Aside from the May 2000 arrest, the arrests occurred during the individual's youth, within an eight-year period ending in 1993. Each arrest followed bouts of excess alcohol consumption, and I am convinced that the alcohol consumption is what led to the antisocial behavior that in turn led to the arrests. There is no evidence that the individual was ever arrested when he had not been drinking alcohol. I have concluded above that the individual has demonstrated that the likelihood of his resorting to alcohol abuse is low enough to be an acceptable risk. Because the individual's history of arrests establishes that excess alcohol consumption infallibly preceded the arrests, and because the risk that he will engage in such behavior in the future is acceptably low, I find that the risk that the individual will continue a pattern of violating laws, including any that protect classified information, is so low that it may be considered an acceptable risk. Consequently, it is my opinion that the individual has resolved the DOE Office's security concern under Criterion L.

#### **IV. CONCLUSION**

For the reasons set forth above, I conclude that the individual has resolved the security concerns raised under Criteria J and L. The individual has demonstrated that granting his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, it is my opinion that the individual's access authorization should be granted.

William M. Schwartz  
Hearing Officer  
Office of Hearings and Appeals

Date: [October 29, 2002](#)